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Corporation as Receiver for Silicon Valley Bank

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SHIRLEY JANE LEUNG,

Plaintiffs,

vs.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for Silicon
Valley Bank, SILICON VALLEY BANK,
SVB INVESTMENT SERVICES, INC., SVB
WEALTH, LLC, FIRST-CITIZENS BANK
& TRUST CO., GREG BECKER, JOHN
LONGLEY,

Defendants.

Case No: 5:24-cv-00337-BLF

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

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1 1. PURPOSES AND LIMITATIONS. Disclosure and discovery activity in this action
2 are likely to involve production of confidential, proprietary, or private information for which special
3 protection from public disclosure and from use for any purpose other than prosecuting this litigation
4 may be warranted. Accordingly, the parties hereby stipulate to, and petition the Court to enter, the
5 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
6 blanket protections on all disclosures or responses to discovery and that the protection it affords from
7 public disclosure and use extends only to the limited information or items that are entitled to
8 confidential treatment under the applicable legal principles. The parties further acknowledge that this
9 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
10 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied
11 when a party seeks permission from the court to file material under seal.

12 2. DEFINITIONS

13 2.1 Bank: means the failed Bank, Silicon Valley Bank, closed on Friday March 10, 2023,
14 by the California department of Financial Protection & Innovation to which the FDIC was appointed
15 Receiver.

16 2.2 Challenging Party: a Party that challenges the designation of information or items
17 under this Stipulated Protective Order.

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
19 as their support staff).

20 2.4 Designating Party: a Party that designates information or items that it produces in
21 disclosures or in responses to discovery as “CONFIDENTIAL.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
23 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
24 transcripts, and tangible things), that are produced or generated in disclosures or responses to
25 discovery in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
27 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
28 consultant in this action.

1 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel
2 does not include Outside Counsel of Record or any other outside counsel.

3 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
4 entity not named as a Party to this action.

5 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
6 but are retained to represent or advise a party to this action and have appeared in this action on behalf
7 of that party or are affiliated with a law firm which has appeared on behalf of that party.

8 2.10 Party: any party to this action, including all of its officers, directors, House Counsel,
9 employees, and Outside Counsel of Record and their support staffs.

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
11 in this action.

12 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
13 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
14 storing, or retrieving data in any form or medium) and their employees and subcontractors.

15 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
16 “CONFIDENTIAL.”

17 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
18 Producing Party.

19 2.15 Receivership: is the Bank Receivership to which the FDIC was appointed as receiver
20 for the Bank.

21 3. SCOPE. All materials produced or adduced in the course of discovery, including
22 initial disclosures, responses to discovery requests, deposition testimony and exhibits, and
23 information derived directly therefrom (hereinafter collectively the specific “documents”), shall be
24 subject to this Stipulated Protective Order concerning “Confidential Material” as defined below. The
25 protections conferred by this Stipulated Protective Order cover not only Confidential Material (as
26 defined below) but also (1) any information copied or extracted from Confidential Material; (2) all
27 copies, excerpts, summaries, or compilations of Confidential Material; and (3) any testimony,
28 conversations, or presentations by parties, third parties or their respective counsel that might reveal

Confidential Material. This Order is subject, as applicable, to the Local Rules of this District, and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

However, the protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Stipulated Protective Order, including becoming part of the public record through trial or otherwise; and (b) any information known to a Party that receives Disclosure or Discovery Material from a Producing Party that the Receiving Party obtained either prior to the disclosure or after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DEFINITION OF CONFIDENTIAL MATERIAL. For purposes of this Stipulated Protective Order, “Confidential Material” shall mean certain documents, records, and information, including electronically composed or stored information in written, electronic, digital, or any other medium (hereinafter “Information”), provided by any Party or non-party pursuant to this Protective Order. Confidential Material includes, but is not limited to, the following:

(a) **Regulatory:** Confidential Material related in any way to the regulation or supervision of the Bank, in whatever form, whether preliminary or final, including non-public reports of examination or inspection, regulatory correspondence, reports, orders, memoranda, or agreements by, from or with the FDIC in its corporate capacity, the Comptroller, or any other federal or state regulatory authority, and any Information containing confidential material obtained from any documents and records related to the supervision or regulation of the Bank. The Parties understand and agree that the release of such regulatory Information may require approval from independent government agencies, and that no regulatory Information, however obtained, will be disclosed to non-parties not covered by this Protective Order.

(b) **Statutory:** Confidential Material includes Information that is confidential pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(8)(A), 12 C.F.R. Part 309.5(g), 12 C.F.R. § 21.11, the laws of the state of California or any other applicable federal or state laws, including consumer nonpublic personal information (“Non-Party Borrower Information”) as defined by the Gramm-Leach-Bliley Act, 15 U.S.C. § 6802, *et seq.* and its implementing regulations.

(c) **Bank and Bank Customers.** Confidential Material related to the Bank, its employees (*i.e.*, personnel or employment records), its customers, any trading

1 company involved in placing orders for stocks, commodities futures or options, or
2 any other entity, including Automated Clearing House items or transactions,
3 chargebacks, merchant processing, bank account information, signature cards, bank
4 statements, general ledger entries, deposit or reserve information, stock or commodity
5 trading statements, loans and lending transactions, loan applications, financial
6 statements and credit reports, business and personal state and federal income tax
7 forms, correspondence, and related loan documentation relating to any extension of
8 credit or loan to any borrower. Examples of “Confidential Material,” without
limitation, include documents containing a customer’s account number, credit card
number, personal identification number, account balance, Information relating to a
deposit account, loan, or borrower relationship and loan application materials, and
documents or Information that contain the customer’s name, address, social security
number, date of birth or other similar identifying Information.

9 (d) **Receivership.** Confidential Material related to the receivership of the Bank that
10 is non-public, including any Information on loss or estimates of such loss on the
11 Bank’s assets not publicly available. Notwithstanding the provisions of paragraph
12 8(b) below, no such Confidential Material shall be disclosed to any person or entity,
13 including plaintiff or defendants, or any non-party known to have any current or
14 prospective interest in such assets, regardless of whether that person or entity would
otherwise be allowed access to Information under the terms of this Protective Order.
This subparagraph (d), however, does not prevent such Confidential Material—to the
extent same may be produced—from being shared with Party experts or others listed
in paragraph 8(b).

15 (e) **Non-Parties.** Confidential Material produced by independent contractors, outside
16 accountants or auditors (other than Plaintiff or Defendants), or other entities or
17 individuals who performed work for the Bank.

18 (f) **Trade Secrets and Other Information.** Confidential Material that reveals trade
19 secrets or research, technical, commercial, or financial Information that the Party or
20 non-party that accepts the terms of this Stipulated Protective Order has maintained as
21 confidential through, for example, requiring employees to execute Non-Disclosure
Agreements. The definition of a trade secret for purposes of this Stipulated Protective
Order includes the definition set forth in 18 U.S.C. § 1839.

22 (g) **Personally Identifiable Information (PII).** Confidential Material that contains
23 PII as defined in the Freedom of Information Act, the Privacy Act, the Bank Secrecy
Act, and Gramm-Leach-Bliley Act.

24 (h) **Financial, Medical, and Job Search Information of Plaintiff.** Confidential Material
25 includes: Plaintiff’s financial information, Plaintiff’s health and medical information and
26 Plaintiff’s efforts to obtain employment after her termination from the Bank, such as job
27 applications and resumes including communications regarding the same, networking emails
and attachments sent or prepared in effort to identify employment opportunities, and
communications or documents exchanged with recruiters or job coaches.

1 If any Party or non-party believes that Information not described above should nevertheless
2 be considered as Confidential Material, it may seek a stipulation among the Parties to treat such
3 Information as Confidential Material or it may make an appropriate application to the Court. Such
4 application shall only be granted for good cause shown. Information that is available to the public
5 or generally known in the industry of the Party may not be designated as Confidential Material.
6 Notwithstanding the foregoing paragraphs (a) through (h), no Party is estopped or in any way
7 prevented from later challenging the confidentiality designation of any Confidential Material.

8 5. CONFIDENTIAL DESIGNATION AND TREATMENT OF CONFIDENTIAL
9 MATERIAL. Confidential Material provided by a Designating Party pursuant to this Stipulated
10 Protective Order that is deemed and denominated by any Party as “CONFIDENTIAL” pursuant to
11 this Protective Order shall be deemed to be Confidential Material, unless and until that designation
12 is challenged pursuant to paragraph 12 below. Confidential Material may be designated as such by
13 affixing to the material the legend “CONFIDENTIAL.” For example, the production media/container
14 for native files or productions may be designated as “CONFIDENTIAL.” The failure to designate
15 any Confidential Material with such legend shall not constitute a waiver by any Party of the right to
16 assert that such Information contains or includes protected Confidential Material. In the event that
17 any Party produces Confidential Material without designating it as such, any Party may notify the
18 receiving Parties that the Information should have been designated Confidential Material, and the
19 Parties will treat the Information as Confidential Material under this Protective Order. Confidential
20 Material shall only mean and shall be limited to the Information produced in this Lawsuit marked
21 with a Bates Stamp number or otherwise designated as “Confidential.” In the event a Party obtains a
22 duplicate copy of Confidential Material produced in discovery in this Lawsuit from a publicly
23 available source, the Party acquiring the Confidential Material shall not be required to comply with
24 the terms of this Protective Order regarding the use of the duplicate Confidential Material, and the
25 use of such duplicate Confidential Material shall not be subject to the provisions of this Protective
26 Order.

1 6. EXERCISE OF RESTRAINT AND CARE IN DESIGNATING MATERIAL FOR
 2 PROTECTION. Each Party who designates Information or items for protection under this Stipulated
 3 Protective Order must take care to limit any such designation to specific material that qualifies under
 4 the appropriate standards. The Designating Party must designate for protection only those parts of
 5 material, documents, items, or oral or written communications that qualify – so that other portions
 6 of the material, documents, items, or communications for which protection is not warranted are not
 7 swept unjustifiably within the ambit of this Order.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 9 to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
 10 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 11 other parties) expose the Designating Party to sanctions.

12 If it comes to a Designating Party's attention that Information or items that it designated for
 13 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
 14 that it is withdrawing the mistaken designation.

15 7. DEPOSITIONS. Unless all parties agree on the record at the time the deposition
 16 testimony is taken, all deposition testimony taken in this case shall be treated as Confidential
 17 Material until the expiration of the following: No later than the fourteenth day after the transcript is
 18 delivered to any party or the witness, and in no event later than 60 days after the testimony was
 19 given. Within this time period, a party may serve a Notice of Designation to all parties of record as
 20 to specific portions of the testimony that are designated Confidential Material, and thereafter only
 21 those portions identified in the Notice of Designation shall be protected by the terms of this
 22 Stipulated Protective Order. The failure to serve a timely Notice of Designation shall waive any
 23 designation of testimony taken in that deposition as Confidential Material, unless otherwise ordered
 24 by the Court.

25 8. PROTECTION OF CONFIDENTIAL MATERIAL.

26 (a) **General Protections.** Confidential Material shall not be used or disclosed
 27 by the parties, counsel for the parties or any other persons identified in subparagraph (b) for any
 28 purpose whatsoever other than in this litigation, including any appeal thereof. The transmission of

Confidential Information between the FDIC in its capacity as Receiver for and other government agencies, including, but not limited to, the FDIC acting in its various other capacities, shall not constitute disclosure for purposes of this Stipulated Protective Order.

(b) **Limited Third-Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any Confidential Material to any third person or entity except as set forth in subparagraphs (1)-(9). Subject to these requirements, the following categories of persons may be allowed to review Confidential Material:

- (1) **Counsel.** Counsel for the parties and employees of counsel who have responsibility for the action;
- (2) **Parties.** Individual parties and employees of a party but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of the litigation. Employees of the following parties: SVB Investment Services, Inc. SVB Wealth, LLC, and First Citizens Bank & Trust Co. shall not review Confidential Material produced by the Plaintiff without signing this Protective Order attached hereto as Exhibit A;
- (3) **The Court and its personnel;**
- (4) **Court Reporters and Recorders.** Court reporters and recorders engaged for depositions;
- (5) **Contractors.** Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents;
- (6) **Consultants and Experts.** Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;
- (7) **Witnesses at depositions.** During their depositions, witnesses in this action to whom disclosure is reasonably necessary, provided that the witness agrees under oath at the deposition not to disclose the Confidential Material to any third person or entity. Witnesses shall not retain a copy of documents containing Confidential Information, except witnesses may receive a copy of all exhibits marked at their depositions in connection with review of the transcripts, provided that the witness returns the Confidential Information to the undersigned counsel upon signing the transcript and certifies that all such Confidential Information has been returned. Pages of transcribed deposition

testimony or exhibits to depositions that are designated as Confidential Information pursuant to the process set out in this Protective Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order;

(8) **Author or recipient.** The author or recipient of the document (not including a person who received the document in the course of litigation); and

(9) **Others by Consent.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered.

(c) **Control of Documents.** Counsel for the parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential Material. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Protective Order for a period of three years after the termination of the case.

9. INADVERTENT FAILURES TO DESIGNATE. An inadvertent failure to designate a document as Confidential Material does not, standing alone, waive the right to so designate the document; provided, however, that a failure to serve a timely Notice of Designation of deposition testimony as required by this Protective Order, even if inadvertent, waives any protection for deposition testimony. If a party designates a document as Confidential Material after it was initially produced, on notification of the designation, the Receiving Party must make a reasonable effort to assure that the document is treated in accordance with the provisions of this Protective Order. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated Confidential Material, even where the failure to so designate was inadvertent and where the material is subsequently designated Confidential Information.

10. FILING OF CONFIDENTIAL MATERIAL. This Order does not, by itself, authorize the filing of any document under seal. Any party wishing to file a document designated as Confidential Information in connection with a motion, brief or other submission to the Court must comply with applicable local rules.

11. NO GREATER PROTECTION OF SPECIFIC DOCUMENTS. Except on privilege

1 grounds not addressed by this Protective Order, no party may withhold Information from discovery
2 on the ground that it requires protection greater than that afforded by this Order unless the party
3 moves for an order providing such special protection.

4 12. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 12.1 Timing of Challenges. Any Party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
8 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
9 confidentiality designation by electing not to mount a challenge promptly after the original
10 designation is disclosed,

11 12.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
12 process by providing written notice of each designation it is challenging and describing the basis for
13 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
14 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
15 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
16 begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication
17 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party
18 must explain the basis for its belief that the confidentiality designation was not proper and must give
19 the Designating Party an opportunity to review the designated material, to reconsider the
20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
21 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
22 has engaged in this meet and confer process first or establishes that the Designating Party is unwilling
23 to participate in the meet and confer process in a timely manner.

24 12.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
26 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
27 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
28 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a

competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

13. ACCESS TO AND USE OF PROTECTED MATERIALS

13.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Protective Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of paragraph 23 below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Protective Order.

14. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION If a Party is served with a subpoena or a court order issued in other litigation

that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or Court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or Court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

15. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Protective Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” so long as the non-party executes the acknowledgement attached hereto as Exhibit A to accept the terms of this Stipulated Protective Order. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or

1 all of the information requested is subject to a confidentiality agreement with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of this Protective Order in this
3 litigation, the relevant discovery request(s), and a reasonably specific description of the information
4 requested; and

5 (3) make the information requested available for inspection by the Non-Party.

6 16. CONFIDENTIAL INFORMATION SUBPOENAED OR ORDERED PRODUCED
7 PURSUANT TO CRIMINAL INVESTIGATION AND/OR PROSECUTION. Notwithstanding any
8 other provision of this Protective Order, if a receiving party is served with a warrant, writ, grand jury
9 subpoena, or criminal subpoena, the receiving party shall comply with that warrant, writ, grand jury
10 subpoena, or criminal subpoena without further notification to any other party.

11 17. DISCLOSURE OF NON-PARTY BORROWER INFORMATION. To the extent
12 any federal or state law or other legal authority governing the disclosure or use of non-party borrower
13 Information (“Non-Party Borrower Information Law”) permits disclosure of such Information
14 pursuant to an order of a court, this Protective Order shall constitute compliance with such
15 requirement. To the extent any Non-Party Borrower Information Law requires a producing party or
16 non-party to obtain a court-ordered subpoena or give notice to or obtain consent, in any form or
17 manner, from any person or entity before disclosure of any Non-Party Borrower Information, the
18 Court finds that, in view of the protections provided for the Information disclosed in this Order, the
19 volume of documents to be produced and the ongoing oversight of the Court, there is good cause to
20 excuse such requirement, and this Order shall constitute an express direction that the producing Party
21 or non-party is exempted from obtaining a court-ordered subpoena or having to notify and/or obtain
22 consent from any person or entity prior to the disclosure of Non-Party Borrower Information in the
23 Action. To the extent that any Non-Party Borrower Information Law requires that any person or
24 entity be notified prior to disclosure of Non-Party Borrower Information except where such notice is
25 prohibited by court order, the Court directs that, in view of the protections provided for the
26 Information disclosed in this Order, the volume of documents to be produced and the ongoing
27 oversight of the Court, producing Parties or non-parties are explicitly prohibited from providing such
28

notice in the Action; provided, however, that this Order shall not prohibit any producing Party or non-party from contacting any person or entity for any other purpose. Any producing Party or non-party may seek additional orders from this Court that such Party or non-party believes may be necessary to comply with any Non-Party Borrower Information Law.

18. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

19. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

20. MISCELLANEOUS

20.1 Right to Further Relief. Nothing in this Protective Order abridges the right of any person to seek its modification by the Court in the future.

20.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item on any ground not addressed in this Protective Order. Similarly, no Party waives
2 any right to object on any ground to use in evidence of any of the material covered by this Protective
3 Order.

4 20.3 Filing Protected Material. Without written permission from the Designating
5 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
6 in the public record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
8 under seal pursuant to a Court order authorizing the sealing of the specific Protected Material at
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
10 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
11 to protection under the law. If a Receiving Party's request to file Protected Material under seal
12 pursuant to Civil Local Rule 79-5 is denied by the Court, then the Receiving Party may file the
13 information in the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the
14 court.

15 21. RESERVATION OF RIGHTS. Nothing in this Protective Order confers upon the
16 Parties any further right or access to Confidential Material not provided by the other Parties,
17 including but not limited to any Information a Party or non-party withholds on the basis of any
18 applicable privilege or immunity, regardless of whether such withheld Information may otherwise
19 qualify as Confidential Material if produced rather than withheld. With respect to Confidential
20 Material requested or produced, each Party reserves its rights under this Protective Order, and
21 otherwise under law. Any Confidential Material withheld on this basis or any other basis must be
22 identified on a privilege log to be provided by the Party or non-party asserting the privilege or other
23 protection within two weeks of the date the Confidential Material would have been produced had it
24 not been privileged or otherwise protected from disclosure.

25 22. DURATION.

26 Even after final disposition of this litigation, the confidentiality obligations imposed by this
27 Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a
28

1 court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 2 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the
 3 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 4 including the time limits for filing any motions or applications for extension of time pursuant to
 5 applicable law.

6 23. OBLIGATIONS ON CONCLUSION OF LITIGATION.

7 (a) **Order Continues in Force.** Unless otherwise agreed or ordered, this Order
 8 shall remain in force after dismissal or entry of final judgment not subject to further appeal.

9 (b) **Obligations at Conclusion of Litigation.** Within ninety days after dismissal
 10 or entry of final judgment not subject to further appeal, all Confidential Material and documents
 11 marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" under this Order, including
 12 copies, shall be returned to the producing party unless: (1) the document has been offered into
 13 evidence or filed without restriction as to disclosure; (2) the parties agree to destruction to the extent
 14 practicable in lieu of return; or (3) as to documents bearing the notations, summations, or other
 15 mental impressions of the receiving party, that party elects to destroy the documents and certifies to
 16 the producing party that it has done so.

17 (c) **Retention of Work Product and one set of Filed Documents.**
 18 Notwithstanding the above requirements to return or destroy documents, counsel may retain (1)
 19 attorney work product, including an index that refers or relates to designated Confidential
 20 Information so long as that work product does not duplicate verbatim substantial portions of
 21 Confidential Material, and (2) one complete set of all documents filed with the Court including those
 22 filed under seal. Any retained Confidential Information shall continue to be protected under this
 23 Order. An attorney may use his or her work product in subsequent litigation, provided that its use
 24 does not disclose or use Confidential Material.

25 (d) **Deletion of Documents filed under Seal from Electronic Case Filing**
 26 **(ECF) System.** Filings under seal shall be deleted from the ECF system only upon order of the Court.

27 24. ORDER SUBJECT TO MODIFICATION. This Order shall be subject to
 28

1 modification by the Court on its own initiative or on motion of a party or any other person with
2 standing concerning the subject matter.

3 25. NO PRIOR JUDICIAL DETERMINATION. This Order is entered based on the
4 representations and agreements of the parties and for the purpose of facilitating discovery. Nothing
5 herein shall be construed or presented as a judicial determination that any document or material
6 designated Confidential Material by counsel or the parties is entitled to protection under Rule 26(c)
7 of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a
8 specific document or issue.

9 26. NO WAIVER OF PRIVILEGES. Pursuant to Fed. R. Evid. 502(d), the production
10 of Confidential Material that is subject to the attorney-client privilege or the work product doctrine
11 shall not be deemed, and shall not constitute, in this or any other federal or state proceeding, a waiver
12 of any otherwise applicable privilege or protection. The Parties shall not have to meet the
13 requirements of Fed. R. Evid. 502(b)(1)-(3). The Parties' production of Confidential Material is not
14 intended to, and shall not, waive or diminish in any way the confidentiality of such material or its
15 continued protection under the attorney-client privilege and work product doctrine.
16

17 In addition, the Parties also agree the production of Confidential Material that is subject to
18 other claimed privileges, doctrines, exemptions, or restrictions that the producing Party or nonparty
19 might cite in good faith as a basis for withholding such Confidential Material from production to any
20 other party shall not be deemed, and shall not constitute, in this or any other federal or state
21 proceeding, a waiver of any otherwise applicable privilege or protection. The Parties acknowledge
22 that Fed. R. Evid. 502(d) pertains only to the attorney-client privilege or the work product doctrine,
23 and does not include these other claimed privileges, doctrines, exemptions, or restrictions.
24 Recognizing this, the Parties intend to treat the production of such privileged information similarly
25 (*i.e.* no waiver), unless the production of the privileged information is completely reckless. With
26 respect to the FDIC, in any of its capacities, these privileges include, but are not limited to, any
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1 privilege that the Bank may have had or any federal or state regulatory agency may hold.

2 Furthermore, in the event that a Party or non-party produces attorney-client privileged or
3 work product privileged information, or other information protected by law from disclosure even
4 under a Protective Order, and if the Party or non-party subsequently notifies the receiving Party or
5 non-party that the privileged information should not have been produced, the receiving Party or non-
6 party shall immediately return the originals and all copies of the inadvertently produced privileged
7 Information. If a party withholds any information on the basis of Privilege, it shall provide a
8 categorical privilege log. The Parties agree that the FDIC-R is not required to provide any kind of
9 identification of the documents withheld from production as protected by the Bank Secrecy Act.
10 Nothing in this Protective Order shall prevent the FDIC-R from using any Confidential Material that
11 it produces to any Party or non-party in any of the FDIC's capacities for any lawful purposes.
12

13 27. BINDING EFFECT; ASSIGNMENT. This Protective Order shall be binding upon
14 and inure to the benefit of the Parties and non-parties hereto, their affiliates, their representatives,
15 and their respective successors or assigns. No Party may assign any right or delegate any duty under
16 this Protective Order other than to an affiliate without the other Party's prior written consent.
17

18 28. REMEDIES. To enforce rights under this Protective Order or in the event of an
19 alleged violation of this Protective Order, the Parties and/or any producing non-party shall first seek
20 to resolve the alleged violation through prompt and reasonable discussion. In the event such efforts
21 fail to promptly resolve the alleged violation, the Parties and/or any producing non-party reserve the
22 right to seek relief from the Court in the Lawsuit for money damages, injunctive relief, or any other
23 relief as appropriate.
24

25 29. NOTICE. All notices required to be given under the Protective Order shall be in
26 writing and delivered to the addressees set forth below or their designated successor counsel of
27 record, if any. Notice shall be sent by overnight delivery or registered or certified mail, return receipt
28

requested, and by e-mail, and shall be considered delivered and effective three days after mailing.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

DATED: July 15, 2024

/s/ Stephen P. Wilkes

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: _____

HONORABLE BETH LABSON FREEMAN
U.S. DISTRICT COURT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ in the case of ***Leung v. Federal Deposit Insurance Corporation, as Receiver For Silicon Valley Bank***, I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

SIGNATURE ATTESTATION

This document is being filed through the Electronic Case Filing (ECF) system by attorney Stephen P. Wilkes. By his signature, Mr. Wilkes attests that he has obtained concurrence in the filing of this document from the other signatories.

/s/Stephen P. Wilkes